

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Jocelyn M. Butts
239 Deborah Lane
Bedford, OH 44146

Plaintiff,

vs.

United States of America
c/o Bridget M. Brennan, United States Attorney
801 W. Superior Avenue, Suite 400
Cleveland, OH 44113

and

LM General Insurance Company
c/o Corporation Service Company
50 West Broad Street
Suite 1330
Columbus, OH 43215

Defendants.

CASE NO:

JUDGE

COMPLAINT IN NEGLIGENCE

Type: Personal Injury

Now comes the Plaintiff, Jocelyn M. Butts, by and through her undersigned counsel, and for her Complaint states as follows:

JURISDICTION AND VENUE

1. This court has jurisdiction over this claim against the United States of America for money damages pursuant to 28 U.S.C. §1346(b)(1).
2. Pursuant to 28 U.S.C. §1402(b) and §1391(e)(1), venue is proper in the Northern

District of Ohio because the acts or omissions giving rise to the claim occurred in the Northern District of Ohio, and Plaintiff Jocelyn M. Butts resides in the Northern District of Ohio.

3. Defendant, United States of America (“USA”), was the employer of Kevin M. Booker, a U.S. Postal Service employee, who, while in the course and scope of employment, was involved in a motor vehicle collision with Plaintiff Jocelyn M. Butts on October 21 2016. Pursuant to 28 U.S.C. §2679 and 39 CFR §912.2, Plaintiff’s exclusive remedy is to proceed against Defendant, United States of America (“USA”), under the Federal Tort Claims Act (“FTCA”) in this Court. Plaintiff has satisfied all of the prerequisites necessary to file suit in this Court under the FTCA.

4. On October 21, 2016, Plaintiff, Jocelyn M. Butts, was an insured under one or more policies of insurance issued by Defendant, LM General Insurance Company, which provided for underinsured/uninsured motorist coverage and/or medical payments for Plaintiff.

5. Because Plaintiff’s claims against Defendant, LM General Insurance Company, arise out of the motor vehicle collision caused by Kevin M. Booker, this court has supplemental jurisdiction over Plaintiff’s claims against Defendant, LM General Insurance Company, pursuant to 28 U.S.C. §1367.

STATEMENT OF FACTS

6. Plaintiff, Jocelyn M. Butts, was resident of Cuyahoga County, Ohio on October 21, 2016, the date of the accident, which gives rise to this lawsuit, and continues to reside in Cuyahoga County, Ohio.

7. Kevin M. Booker, who at all relevant times herein was an employee of Defendant USA, was operating a motor vehicle owned by Defendant USA in the course and scope of employment with Defendant USA.

8. On October 21, 2016, at or near 580 Turney Road in the city of Bedford, Cuyahoga County, Ohio, Plaintiff stopped her vehicle for stopped traffic ahead. Kevin M. Booker, who was traveling directly behind Plaintiff, negligently operated his vehicle so as to cause a collision with Plaintiff. Kevin M. Booker was further negligent by failing to follow his statutory duty to maintain an assured clear distance ahead, and to maintain reasonable control of the vehicle he was operating.

9. On October 4, 2017, Plaintiff submitted a Standard Form 95 to Julie A. Hammond, Tort Claims Coordinator of the Tort Claims Investigation for the Northern Ohio District.

10. On or about February 12, 2018, Defendant USA made its initial offer to resolve this matter. Thereafter, the parties continued attempts at informal resolution.

11. In a letter dated July 12, 2018, and sent via certified mail, Defendant USA issued a formal denial of Plaintiff's claim.

12. On or about January 4, 2019, Plaintiff filed her request for reconsideration pursuant to 39 C.F.R. 912.9(b). Plaintiff's Request for Reconsideration, received by Defendant USA on January 7, 2019, was based on newly discovered evidence, and pursuant to 28 U.S.C. §2675(b), Plaintiff's demand was amended.

13. In a letter dated March 18, 2019, Defendant USA advised that it was continuing to review the additional documentation submitted by Plaintiff in her reconsideration.

14. In a facsimile dated April 22, 2020 and received by Defendant USA on the same date, Plaintiff advised Defendant USA that she has discovered additional evidence that necessitates a further increase in her demand pursuant to 28 U.S.C. §2675(b).

15. Plaintiff and Defendant USA have continued attempts at informal resolution, but have been unable to reach an agreement. To date, USA has not issued a formal denial of Plaintiff's Request for Reconsideration received by Defendant USA on January 7, 2019.

COUNT I - NEGLIGENCE

16. As a direct and proximate result of Kevin M. Booker's negligence, Plaintiff suffered injuries to her mind and body causing inconvenience, physical, mental, and emotional pain and suffering and will continue to suffer said injuries and pain and suffering into the future and upon a permanent basis.

17. As a further result, the Plaintiff, Jocelyn M. Butts, incurred medical and hospital expenses and expects to incur such expenses in the future.

18. As a further result, the Plaintiff, Jocelyn M. Butts, incurred out-of-pocket expenses, lost income, loss of earning capacity and will continue to suffer such losses and damages into the future.

COUNT II – UNINSURED/UNDERINSURED/MEDPAY

19. Plaintiff re-alleges all paragraphs above as though fully rewritten herein.

20. At all relevant times herein, the Plaintiff, Jocelyn M. Butts, was the insured on a motor vehicle insurance policy issued by the Defendant, LM General Insurance Company, which provides for medical payments and/or uninsured/underinsured motorist coverage.

21. Said policy provides uninsured/underinsured motorist coverage for the Plaintiff, Jocelyn M. Butts, when she was struck by an underinsured driver.

22. Said policy is not attached hereto by reason of its bulk, but a copy of said policy is in the possession of the Defendant, LM General Insurance Company.

23. As a result of the negligence of the underinsured motorist, the Plaintiff is entitled to the benefits up to the amount of the limits of the Defendant, LM General Insurance Company's policy.

24. Defendant, LM General Insurance Company, claims a right of reimbursement and/or subrogation for monies it allegedly paid or will pay as a result of the events set forth in this Complaint.

25. As it relates to any alleged subrogation interest of Defendant, LM General Insurance Company, that interest must be reduced in accordance with R.C. §2323.44, and the Plaintiff, Jocelyn M. Butts, seeks a declaration as to the subrogation rights of the parties pursuant to R.C. §2323.44.

WHEREFORE, Plaintiff, Jocelyn M. Butts, demands judgment against the Defendants as follows:

- a. compensatory damages in an amount of three hundred thousand dollars (\$300,000.00), plus costs incurred in this action plus interest and attorney's fees;
- b. a declaration that Plaintiff is insured for purposes of medpay and UM/UM coverages afforded under the motor vehicle insurance policies issued by Defendant, LM General Insurance Company, the damages Plaintiff sustained as a result of the accident fall within the policies' insuring agreements for medpay and UM/UM coverage, Plaintiff has satisfied all coverage conditions, and the policies' exclusions do not preclude coverage;
- c. a declaration that Defendant, LM General Insurance Company is not entitled to reimbursement/subrogation unless and until Plaintiff is made whole and Plaintiff's litigation fees and expenses are deducted from any recovery;

- d. a declaration that Plaintiff is entitled to her medical benefits payments pursuant to her contract of insurance with Defendant, LM General Insurance Company; and
- e. such other relief to which Plaintiff may show herself entitled.

Respectfully submitted,

KISLING, NESTICO & REDICK, LLC

/s/ Michael J Maillis

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